UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 400, CLC (KROGER STORE NO. 755),

and

Case No. 06-CB-222829

SHELBY KROCKER.

CHARGING PARTY'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Charging Party Shelby Krocker files these Exceptions to Administrative Law Judge Robert A. Giannasi's ("ALJ") Decision and Order ("ALJD") in the above-captioned case.

1. The ALJ erred in his finding that United Food and Commercial Workers Union, Local 400's ("Union") ambiguous checkoff language did not violate its duty of fair representation, ALJD at 6:4–10, and that the General Counsel's position is not supported by case law or the duty of fair representation. ALJD at 5:11–13.

2. The ALJ misinterprets the Board's decision in *Electrical Workers IUE Local 444 (Paramax Systems)*, 311 NLRB 1031 (1993). ALJD at 5:16–30.

3. The ALJ erred in his conclusion that ambiguity in union communications cannot be a violation of National Labor Relations Act ("Act") Section 8(b)(1)(A), 29 U.S.C. § 158(b)(1)(A), or the duty of fair representation. ALJD at 6:4–6.

4. The ALJ erred in his reference to "Must Sign" language on Krocker's checkoff. ALJD at 6: 15, 17, 7:1, 9, 23. The checkoff reads "MUST BE SIGNED."

5. The ALJ erred in dismissing the General Counsel's allegation that the checkoff's "MUST BE SIGNED" language violated Section 8(b)(1)(A). ALJD at 7:1–10.

6. The ALJ failed to consider whether the Union's failure to honor Krocker's checkoff revocation violated Section 8(b)(1)(A) because the checkoff was not "clear and unmistakable language waiving the right to refrain from assisting a union," as required by *IBEW, Local No. 2088 (Lockheed Space Operations)*, 302 NLRB 322 (1991). *See* ALJD at 7:1–10.

7. The ALJ erred in his conclusion that the three-part form did not violate Section 8(b)(1)(A) because "the requirements are sufficiently differentiated so employees can reasonably distinguish the separate authorizations necessary." ALJD at 7:15–19.

8. The ALJ erred in his conclusion that the Union did not violate Section 8(b)(1)(A) "by use of the words 'Must Sign' alongside the heading of the dues check-off authorization clearly stating that the authorization is voluntary." ALJD at 7:21–24.

9. The ALJ erred in his statement that the "question is whether the highlighted phrases distort the requirements of [Labor Management Relations Act Section 302(c)(4), 29 U.S.C. § 186(c)(4),] in such a way as to restrain or coerce an employee in the right to revoke . . . her authorization when appropriate." ALJD at 8:20–23. This statement improperly limits the allegations in the complaint and the stipulation of issues presented.

10. The ALJ erred in dismissing the allegation that the ambiguous terms in the checkoff violate Section 8(b)(1)(A). ALJD at 8:31.

11. The ALJ erred in failing to consider the allegation, raised by both the General Counsel and Charging Party, that the checkoff's language impermissibly restricts checkoff revocation to a short window period before contract expiration.

12. The ALJ erred in his conclusion that the checkoff's language, which purports to

hold employees to the terms of the checkoff if they are re-hired by their employer or are hired by any employer with a contract with the Union, unlimited by time restraints, does not violate the Act. ALJD at 8:35–9:29.

13. The ALJ erred in his conclusion that the Union did not violate the Act by rejecting Charging Party's checkoff revocation as untimely. ALJD at 9:34–41, 10:10.

14. The ALJ erred in his conclusion that the Union did not violate the Act by failing to provide Charging Party with the specific time period during which it would consider a checkoff revocation timely submitted. ALJD at 9:45–10:10.

15. The ALJ wrongfully concluded that the Union permitted the revocation and reimbursed the Charging Party "at the appropriate time" because "revocation would only have been valid as of a later date." ALJD at 10 n.8. The appropriate time to permit Krocker's revocation was when she submitted it.

16. The ALJ erred in his statement that the Union's belated revocation of Charging Party's checkoff and reimbursement of her dues, without interest, "more than cured" its violation. ALJD at 10 n.8.

17. The ALJ erred in his statement that "this is uniquely the type of case that should be dismissed because the matter has been 'substantially remedied or effectively contradicted by subsequent conduct.'" ALJD at 10 n.8 (citing *Dish Network Serv. Corp.*, 339 NLRB 1126, 1128 n.11 (2003)).

18. The ALJ erred in failing to apply *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978), which articulates the Board's standards to determine whether an unfair labor practice has been effectively remedied or repudiated. ALJD at 10 n.8.

19. The ALJ erred in his conclusion that "Respondent has not violated the Act in any way." ALJD at 10:14.

Respectfully submitted,

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